

No. 13,118

IN THE

United States Court of Appeals  
For the Ninth Circuit

---

CECIL LEE DAVIDSON, also known as  
Jack Reynolds,

*Appellant,*

vs.

UNITED STATES OF AMERICA,

*Appellee.*

APPELLANT'S PETITION FOR A REHEARING  
AND  
MOTION TO STAY MANDATE.

---

LESLIE C. GILLEN,

400 Crocker Building, San Francisco 4,

CLIFTON HILDEBRAND,

830 Bank of America Building, Oakland 12,

*Attorneys for Appellant  
and Petitioner.*

FILE

JUL 31 1935

PAUL F. O'BRYEN



## Subject Index

---

	Page
Appellant's Petition for a Rehearing.....	1
1. The decision herein does not apply the rule that in conspiracy cases the corpus delicti cannot be proved by the admissions or declarations of a defendant, and in that respect the decision is not uniform with the decisions in other circuits.....	2
2. The decision herein does not apply the rule that if one abandons a conspiracy or withdraws from it he is absolved from liability for what comes after, and in that respect the decision is not uniform with the decisions of the Supreme Court, the decisions in other circuits, and previous decisions of this court.....	6
3. The decision herein is not uniform with the decision of the Supreme Court in <i>Kotteakos v. United States</i> , 328 U.S. 750, and the decision of this court in <i>Canella v. United States</i> , 157 F. 2d 470.....	7
Motion to Stay Mandate.....	11

## Table of Authorities Cited

---

	Pages
Canella v. United States, 157 F. 2d 470.....	2, 7
Colt v. United States, 5 Cir. 160 F. 2d 650.....	2
Hyde v. United States, 225 U.S. 347, 32 S.Ct. 793.....	6
Kotteakos v. United States, 328 U.S. 750.....	2, 7
Local 167 v. United States, 291 U.S. 297, 54 S.Ct. 396.....	6
Marino v. United States, 9 Cir. 1937, 91 F. 2d 691.....	6
Ryan v. United States, 8 Cir. 99 F. 2d 864.....	2
Tabor v. United States, 4 Cir. 152 F. 2d 254.....	2
Tingle v. United States, 8 Cir. 38 F. 2d 573.....	2
United States v. Anderson, 7 Cir. 1939, 101 F. 2d 325.....	6
United States v. Andolschek, 2 Cir. 1944, 142 F. 2d 503....	3
United States v. Di Orio, 3 Cir. 150 F. 2d 938.....	2
United States v. Graham, 2 Cir. 1939, 102 F. 2d 436.....	6

No. 13,118

IN THE

**United States Court of Appeals**  
**For the Ninth Circuit**

---

CECIL LEE DAVIDSON, also known as  
Jack Reynolds,

vs.

UNITED STATES OF AMERICA,

*Appellant,*

*Appellee.*

**APPELLANT'S PETITION FOR A REHEARING.**

---

*To the Honorable United States Court of Appeals for  
the Ninth District:*

The appellant, Cecil Lee Davidson, also known as Jack Reynolds, respectfully petitions for a rehearing in the above entitled cause. The following grounds are urged:

1. The decision herein does not apply the rule that in conspiracy cases the corpus delicti cannot be proved by the admissions or declarations of a defendant, and in that respect the decision is not uniform with the decisions in other circuits.

2. The decision herein does not apply the rule that if one abandons a conspiracy or withdraws from it

he is absolved from liability for what comes after, and in that respect the decision is not uniform with the decisions of the Supreme Court, the decisions in other circuits, and previous decisions of this court.

3. The decision herein is not uniform with the decisions of the Supreme Court in *Kotteakos v. United States*, 328 U.S. 750, and the decision of this court in *Canella v. United States*, 157 F. 2d 470.

---

1. THE DECISION HEREIN DOES NOT APPLY THE RULE THAT IN CONSPIRACY CASES THE CORPUS DELICTI CANNOT BE PROVED BY THE ADMISSIONS OR DECLARATIONS OF A DEFENDANT, AND IN THAT RESPECT THE DECISION IS NOT UNIFORM WITH THE DECISIONS IN OTHER CIRCUITS.

The rule above stated is one of uniform application in other circuits. (*Colt v. United States*, 5 Cir. 160 F. 2d 650, 651; *Tabor v. United States*, 4 Cir. 152 F. 2d 254, 257; *United States v. Di Orio*, 3 Cir. 150 F. 2d 938, 940; *Ryan v. United States*, 8 Cir. 99 F. 2d 864, 869; *Tingle v. United States*, 8 Cir. 38 F. 2d 573, 575.)

The statement of the rule in *Tingle v. United States*, 8 Cir. 38 F. 2d 573, 575, is as follows:

“But in conspiracy cases, the unlawful combination, confederacy, and agreement between two or more persons, that is, the conspiracy itself, is the gist of the action, and is the corpus delicti charged. It is, therefore, primarily essential to establish the existence of a confederation or agreement between two or more persons before a conviction for conspiracy to commit an offense against the United States can be sustained. This

statement requires no citation of authorities. It is equally true that 'extrajudicial confessions or admissions are not sufficient to authorize a conviction of crime, unless corroborated by independent evidence of the corpus delicti.' *Martin v. United States* (C.C.A.) 264 F. 950."

Your petitioner undertakes the demonstration that when the record before the court is subjected to the acid test of the foregoing rule, the judgment of conviction against him should not be permitted to stand.

The indictment charged petitioner with being party to a conspiracy that began on January 27, 1951, and continued until April 12, 1951. The opinion herein recognizes that the conspiracy was formed by defendant Carrigan, United States Marshal, and defendant Calmes, his deputy, with the objective of extracting money or property from Davis, a potential federal prisoner, through promises or threats. The opinion also recognizes that the first manifestation of the conspiracy was the episode of the proposed automobile trade on January 27, 1951. And the opinion further recognizes that the record is devoid of evidence that petitioner was party to any conspiracy at that time.

Proof legally sufficient in character and weight was therefore necessary to establish that somewhere along the line after January 27, 1951, petitioner knowingly joined the conspiracy with full knowledge of its purpose and that he accepted it and its implications. (*United States v. Andolschek*, 2 Cir. 1944, 142 F. 2d 503, 507.) An application of the rule above invoked

strips from the record the statements of Davis as to what petitioner told him and in the vacuum remaining the judgment of conviction against petitioner cannot possibly survive.

The opinion herein intimates that petitioner was brought into the Davis case following the episode of January 27, 1951, because petitioner was a close friend of Carrigan. That is based entirely on statements by Davis that petitioner said he was a close friend of Carrigan. The record refutes the intimation. Petitioner was brought into the Davis case long before Carrigan became marshal in August of 1950. Petitioner opposed Carrigan in his candidacy for that office and supported a rival candidate. RT 882. What the record shows is that petitioner was brought into the Davis case *in 1949* because he was a friend and business associate of Sam Neider who, in turn, was a very close friend and confidant of Davis. Following his conviction in 1949, Davis became dissatisfied with the attorney representing him and asked his friend Neider to recommend attorneys for handling an appeal to this court. Neider consulted petitioner and the attorneys recommended by petitioner were employed by Davis and handled his appeal and certiorari. RT 1047-1052, RT 1211-1213. When the statements of Davis are eliminated, as they must be eliminated under the rule here invoked, the proper conclusion from the record is that Carrigan and petitioner were not at all friendly.

The episode of January 27, 1951, made Davis apprehensive and he immediately consulted his attor-

neys. RT 363. He stated his attorneys had advised him that the Director of Prisons had approved incarceration in a local jail. RT 265-269. In the natural course of events if Davis surrendered in Alameda County he would be placed in the Santa Rita jail; if he surrendered at San Francisco he would be placed in the San Bruno jail; and if he surrendered at Sacramento, where he was convicted, he would be placed in the Fairfield jail. Any one consulting an attorney would be immediately advised to that effect. Apprehension also caused Davis to consult his friend Neider. Neider, in turn, consulted petitioner as an ally of Neider and Davis, not as an emissary from an enemy, and discussed incarceration of Davis in a local jail but did not mention the episode of January 27, 1951. RT 1222-1223, RT 1231-1232. The scope of petitioner's assistance to Davis was defined and arranged by Neider. In granting Neider's motion for judgment of acquittal the trial judge ruled that the evidence was insufficient to implicate Neider in a conspiracy. The same insufficiency of evidence should prompt this court to reverse the judgment of conviction against this petitioner. Apart from the statements of Davis as to what petitioner said there is no semblance of evidence in the record that petitioner was party to any "deal" involving marshal Carrigan.

The opinion herein also intimates that petitioner arranged for the surrender of Davis. Again the court accepts at par the statements of Davis as to what petitioner said. The record definitely shows that all

arrangements for the surrender of Davis were made by his attorneys. RT 1105, RT 1112-1115.

Another intimation in the opinion is that Davis, while imprisoned, was threatened by petitioner. Davis' attorneys visited him while he was in jail, and even Davis disavowed that petitioner threatened him. RT 273, RT 382-383.

If the rule above invoked be applied, and the statements of Davis as to what petitioner said eliminated, it is plain that there is no case against petitioner. Petitioner respectfully urges that a rehearing should be granted and the rule applied.

---

2. THE DECISION HEREIN DOES NOT APPLY THE RULE THAT IF ONE ABANDONS A CONSPIRACY OR WITHDRAWS FROM IT HE IS ABSOLVED FROM LIABILITY FOR WHAT COMES AFTER, AND IN THAT RESPECT THE DECISION IS NOT UNIFORM WITH THE DECISIONS OF THE SUPREME COURT, THE DECISIONS IN OTHER CIRCUITS, AND PREVIOUS DECISIONS OF THIS COURT.

The rule above stated is one that has been uniformly applied. From the many cases on the subject a few are cited. (*Hyde v. United States*, 225 U.S. 347, 32 S.Ct. 793, 803; *Local 167 v. United States*, 291 U.S. 297, 54 S.Ct. 396, 398; *United States v. Graham*, 2 Cir. 1939, 102 F. 2d 436, 444; *United States v. Anderson*, 7 Cir. 1939, 101 F. 2d 325, 331; *Marino v. United States*, 9 Cir. 1937, 91 F. 2d 691, 696.)

The opinion recognizes in effect that petitioner was absolved from liability for what came after March 26, 1951, when the FBI took over. After that date,

all the negotiations back and forth occurred which ultimately resulted in defendant Carrigan accepting \$2000 with the FBI looking on. Nowhere in the opinion, however, does the court consider the fact that at all events petitioner was absolved from liability for what came after March 26, 1951. Nowhere in the opinion does the court consider the legal consequences flowing from the fact that he was thus absolved. Nowhere in the opinion does the court consider and apply the rule above invoked. It is obvious that the acts and conduct of defendants Carrigan and Calmes after March 26, 1951, influenced the jury in finding petitioner guilty along with Carrigan and Calmes. It is obvious that the acts and conduct of defendants Carrigan and Calmes after March 26, 1951, influenced the trial judge in imposing sentence upon petitioner. And it is obvious that the present record will not permit it to be said that petitioner was an ally of defendants Carrigan and Calmes rather than an ally of Davis and Neider. Petitioner therefore respectfully urges that a rehearing should be granted in order that the rule above invoked may be considered and applied.

- 
3. **THE DECISION HEREIN IS NOT UNIFORM WITH THE DECISION OF THE SUPREME COURT IN KOTTEAKOS v. UNITED STATES, 328 U.S. 750, AND THE DECISION OF THIS COURT IN CANELLA v. UNITED STATES, 157 F. 2d 470.**

Throughout the appeal, petitioner has urged that the principles declared in the above cited cases are controlling in so far as petitioner is concerned. If

petitioner was guilty of conspiracy at all, and he denies it, it was not the conspiracy charged in the indictment or the conspiracy for which defendants Carrigan and Calmes were found guilty. If petitioner was party to a conspiracy it began and ended with the arrangement made between Neider and petitioner to assist Davis. If that arrangement was a conspiracy, and the trial court in exonerating Neider impliedly held that it was not, it was certainly not the conspiracy alleged in the indictment.

Petitioner respectfully urges that further consideration will convince the court of the applicability of the two cases above cited.

Wherefore petitioner respectfully submits that affirmation of the judgment of conviction against this petitioner has resulted in a miscarriage of justice, that a hearing should be granted, and that the judgment against petitioner should be reversed.

Dated, San Francisco,  
July 30, 1952.

LESLIE C. GILLEN,  
CLIFTON HILDEBRAND,  
*Attorneys for Appellant  
and Petitioner.*

CERTIFICATE OF COUNSEL.

The undersigned, one of the counsel for the within named appellant and petitioner in the above entitled cause, hereby certifies in his judgment the foregoing petition for a rehearing is well founded, both in law and fact, and that it is not interposed for delay.

Dated, San Francisco,  
July 30, 1952.

LESLIE C. GILLEN,  
*Counsel for said Appellant  
and Petitioner.*



No. 13,118

IN THE  
**United States Court of Appeals**  
**For the Ninth Circuit**

---

CECIL LEE DAVIDSON, also known as  
Jack Reynolds,

vs.

*Appellant,*

UNITED STATES OF AMERICA,

*Appellee.*

---

**MOTION TO STAY MANDATE.**

---

*To the Honorable United States Court of Appeals for  
the Ninth District:*

The appellant, Cecil Lee Davidson, also known as Jack Reynolds, hereby respectfully moves this Court, in the event that his Petition for a Rehearing is denied, for an order staying the issuance of the mandate in said cause for a period of thirty (30) days after denial of said Petition, in order to allow said appellant to prepare and file a Petition for Writ of Certiorari in the office of the Clerk of the Supreme Court of the United States, and thereafter, until such time as the said Petition for Writ of Certiorari may be

granted or denied and, if granted, until the final determination of the cause.

Dated, San Francisco,  
July 30, 1952.

LESLIE C. GILLEN,  
CLIFTON HILDEBRAND,  
*Attorneys for said Appellant.*